



UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE
United States Patent and Trademark Office
Address: COMMISSIONER FOR PATENTS
P.O. Box 1450
Alexandria, Virginia 22313-1450
www.uspto.gov

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/642,481	08/18/2003	Nobuyuki Enomoto	MA-583-US	3816
21254	7590	06/11/2010	EXAMINER	
MCGINN INTELLECTUAL PROPERTY LAW GROUP, PLLC			BIAGINI, CHRISTOPHER D	
8321 OLD COURTHOUSE ROAD			ART UNIT	PAPER NUMBER
SUITE 200			2442	
VIENNA, VA 22182-3817				
MAIL DATE	DELIVERY MODE			
06/11/2010	PAPER			

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Advisory Action Before the Filing of an Appeal Brief		Application No. 10/642,481	Applicant(s) ENOMOTO ET AL.
		Examiner Christopher Biagini	Art Unit 2442
<p>– The MAILING DATE of this communication appears on the cover sheet with the correspondence address –</p> <p>THE REPLY FILED 28 May 2010 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE.</p> <p>1. <input checked="" type="checkbox"/> The reply was filed after a final rejection, but prior to or on the same day as filing a Notice of Appeal. To avoid abandonment of this application, applicant must timely file one of the following replies: (1) an amendment, affidavit, or other evidence, which places the application in condition for allowance; (2) a Notice of Appeal (with appeal fee) in compliance with 37 CFR 41.31; or (3) a Request for Continued Examination (RCE) in compliance with 37 CFR 1.114. The reply must be filed within one of the following time periods:</p> <p>a) <input checked="" type="checkbox"/> The period for reply expires <u>3</u> months from the mailing date of the final rejection.</p> <p>b) <input type="checkbox"/> The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection.</p> <p>Examiner Note: If box 1 is checked, check either box (a) or (b). ONLY CHECK BOX (b) WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).</p> <p>Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).</p> <p>NOTICE OF APPEAL</p> <p>2. <input type="checkbox"/> The Notice of Appeal was filed on <u>_____</u>. A brief in compliance with 37 CFR 41.37 must be filed within two months of the date of filing the Notice of Appeal (37 CFR 41.37(a)), or any extension thereof (37 CFR 41.37(e)), to avoid dismissal of the appeal. Since a Notice of Appeal has been filed, any reply must be filed within the time period set forth in 37 CFR 41.37(a).</p> <p>AMENDMENTS</p> <p>3. <input type="checkbox"/> The proposed amendment(s) filed after a final rejection, but prior to the date of filing a brief, will <u>not</u> be entered because</p> <p>(a) <input type="checkbox"/> They raise new issues that would require further consideration and/or search (see NOTE below);</p> <p>(b) <input type="checkbox"/> They raise the issue of new matter (see NOTE below);</p> <p>(c) <input type="checkbox"/> They are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or</p> <p>(d) <input type="checkbox"/> They present additional claims without canceling a corresponding number of finally rejected claims.</p> <p>NOTE: <u>_____</u> (See 37 CFR 1.116 and 41.33(a)).</p> <p>4. <input type="checkbox"/> The amendments are not in compliance with 37 CFR 1.121. See attached Notice of Non-Compliant Amendment (PTOL-324).</p> <p>5. <input type="checkbox"/> Applicant's reply has overcome the following rejection(s): <u>_____</u>.</p> <p>6. <input type="checkbox"/> Newly proposed or amended claim(s) <u>_____</u> would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).</p> <p>7. <input checked="" type="checkbox"/> For purposes of appeal, the proposed amendment(s): a) <input type="checkbox"/> will not be entered, or b) <input checked="" type="checkbox"/> will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.</p> <p>The status of the claim(s) is (or will be) as follows:</p> <p>Claim(s) allowed: <u>_____</u></p> <p>Claim(s) objected to: <u>_____</u></p> <p>Claim(s) rejected: <u>3-5-7-9-11-14-18-20-22-24-26-29 and 31-44</u>.</p> <p>Claim(s) withdrawn from consideration: <u>6,15,21,30,36 and 45</u></p> <p>AFFIDAVIT OR OTHER EVIDENCE</p> <p>8. <input type="checkbox"/> The affidavit or other evidence filed after a final action, but before or on the date of filing a Notice of Appeal will <u>not</u> be entered because applicant failed to provide a showing of good and sufficient reasons why the affidavit or other evidence is necessary and was not earlier presented. See 37 CFR 1.116(e).</p> <p>9. <input type="checkbox"/> The affidavit or other evidence filed after the date of filing a Notice of Appeal, but prior to the date of filing a brief, will <u>not</u> be entered because the affidavit or other evidence failed to overcome <u>all</u> rejections under appeal and/or appellant fail to provide a showing a good and sufficient reasons why it is necessary and was not earlier presented. See 37 CFR 41.33(d)(1).</p> <p>10. <input type="checkbox"/> The affidavit or other evidence is entered. An explanation of the status of the claims after entry is below or attached.</p> <p>REQUEST FOR RECONSIDERATION/OTHER</p> <p>11. <input checked="" type="checkbox"/> The request for reconsideration has been considered but does NOT place the application in condition for allowance because: <u>See Continuation Sheet</u></p> <p>12. <input checked="" type="checkbox"/> Note the attached <i>Information Disclosure Statement(s)</i>. (PTO/SB/08) Paper No(s). <u>5/12/2010</u></p> <p>13. <input checked="" type="checkbox"/> Other: <u>See Continuation Sheet</u></p> <p>/Philip C Lee/ Acting Supervisory Patent Examiner, Art Unit 2442</p>			

Continuation of 11. does NOT place the application in condition for allowance because: Applicant first argues, in connection with the rejections under 35 USC 112, first paragraph, that the specification does support the limitation "a source MAC address which has made a learning frame transmission request, said main signal frame having said source address and said destination MAC address." Applicant points to several sections of the specification and provides several excerpts, but it is still not clear how those sections or any other sections support the limitation. For example, the second excerpt (which actually appears on pp. 109-110 of the specification, not page 112 as indicated) does not indicate that the main signal frame has a source address that also made a learning frame transmission request.

Applicant next argues, in connection with the rejections under 35 USC 112, second paragraph, that one of ordinary skill would be able to understand what is being claimed. The Examiner respectfully disagrees. Applicant has not provided a clear rationale for why the claim language is, in fact, definite, or why the Examiner's analysis on page 4 of the Final Action is faulty. In the arguments, Applicant (1) recites, verbatim, the limitations at issue and asserts that they are clear, (2) points to several disparate sections of the specification, in which the term "opposite" only appears in sections that are near-verbatim duplicates of the claim; and (3) explains that "even when the asymmetrical flow is flown by sending the learning frame through a path opposite to the path where the main signal frame flows, the learning process can be functioned..." These arguments do not explain what the term "opposite" means in connection with paths of a network, and are thus unpersuasive. In addition, the Examiner respectfully requests that Applicant clarify argument three (3) above, as it is not clear what is meant by "even when the asymmetrical flow is flown."

Applicant next argues, in connection with the rejections under 35 USC 103(a), that Viswanath fails to teach or suggest "the opposite path." However, Viswanath clearly discloses that "a received data packet may include a VLAN (virtual LAN) tagged frame...that may specify another network" and that the received frame "should be output to a single MAC port or multiple MAC ports" (see col. 6, lines 16-20). Viswanath goes on to explain that, when a VLAN tagged frame is received, "the tag is extracted and the VLAN identifier is stored with the frame." Subsequently, "the rules checker determines, from VLAN information and other header information, from which output port(s) the frame subsequently is to be transmitted." In other words, the frame is received at a port on one network, and is transmitted to a different port or network which may be reasonably construed as being "opposite" to the first port. Accordingly, in light of the deficiencies under 35 USC 112, second paragraph presented above, and giving the claims their broadest reasonable interpretation, the combination of the 802.1D specification and Viswanath renders obvious the limitations at issue.

Applicant next argues that there is no motivation or suggestion to combine the references. The Examiner respectfully disagrees. For example, Viswanath clearly teaches that "recognition of VLAN tagged frames and the stripping and insertion of VLAN tags provide maximum use of memory and bandwidth resources" (see col. 8, lines 47-49). It is for at least this reason that one of ordinary skill would have been motivated to make the combination.

The balance of Applicant's arguments with respect to the rejections under 35 USC 103(a) incorporate arguments already addressed above.

Applicant next argues, in connection with the objection to the drawings, that Figs. 38-40 show "said destination tag information being included in a learning frame that said network transmits to a path opposite to another path in which a main signal frame flows." The Examiner respectfully disagrees. Figs. 38-40 are "swim lane" diagrams that describe the messages passed between various actors in the invention, but provide no illustration of "a path opposite to another path."

Applicant's arguments with respect to the objection to the specification correspond to the arguments already addressed above in connection with the rejection under 35 USC 112, first paragraph, and are unpersuasive for the same reasons.

Continuation of 13. Other: Acknowledgement is made of a claim for foreign priority under 35 USC 119(a)-(d) or (f). All certified copies of the priority documents have been received.